

of group-term life insurance is discriminatory?

A-10: (a) The extent to which employees purchase additional coverage under a plan of group-term life insurance is not taken into account for purposes of determining whether a plan of group-term life insurance is discriminatory. For example, a plan providing insurance to all employees of 1 times annual compensation, which gives all employees the option to purchase additional insurance of 1 times annual compensation at their own expense, would not be considered discriminatory as to the type and amount of benefits available, even if the group (or groups) of participants who purchase additional insurance, if tested separately, would not satisfy the requirements of section 79(d)(2)(A). Solely for this purpose, the choice of an amount of group-term life insurance as a benefit under a cafeteria plan will be treated as the purchase of group-term life insurance by an employee. If additional insurance coverage is available to any key employee that is not available, on a nondiscriminatory basis, to non-key employees, the plan will be considered discriminatory, even if the full cost of such additional insurance coverage is paid by the employee(s) electing such benefits.

(b) If the employer bears a part of the expense of any additional coverage that is purchased by an employee under a plan of group-term life insurance, the additional insurance shall be treated, in part, as an amount of insurance provided by the employer under the plan and, in part, as an amount of insurance purchased by the employee. Except to the extent provided in subparagraph (a) above, the portion of insurance treated as an amount of insurance purchased by the employee is not taken into account for purposes of determining whether the plan is discriminatory. Whether such insurance (together with any other insurance provided by the employer under the plan) will cause the plan to be considered to discriminate in favor of participants who are key employees is determined under the rules of Q&A 9.

Q-11: What effect do the provisions of section 79(d)(1) have if a plan of group-term life insurance is discriminatory for only part of a year?

A-11: If a plan of group-term life insurance is discriminatory at any time during the key employee's taxable year, then it is a discriminatory group-term life insurance plan for that taxable year and the provisions of section 79(d)(1) will be applicable with respect to all group-term life insurance costs allocable to that employee for that year.

Q-12: Are the section 79(d) provisions independent from the requirements contained in Treas. Reg. § 1.79-1?

A-12: Yes. Treasury regulation § 1.79-1(c)(1) provides that life insurance provided to a group of employees cannot qualify as group-term life insurance if it is provided to less than ten full-time employees unless certain requirements are satisfied. The satisfaction of these requirements does not guarantee that the plan will be nondiscriminatory, and vice versa. Treasury regulation § 1.79-1(a)(4) provides that life insurance is not group-term life insurance unless the amount of insurance provided to each employee is computed under a formula that precludes individual selection. The mere fact that a life insurance policy is nondiscriminatory is not determinative as to whether the policy precludes individual selection, and vice versa.

[T.D. 8073, 51 FR 4315, Feb. 4, 1986; 51 FR 7262, Mar. 3, 1986]

§ 1.82-1 Payments for or reimbursements of expenses of moving from one residence to another residence attributable to employment or self-employment.

(a) *Reimbursements in gross income*—(1) *In general.* Any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence attributable to employment or self-employment is includible in gross income under section 82 as compensation for services in the taxable year received or accrued. For rules relating to the year a deduction may be allowed for expenses of moving from one residence to another residence, see section 217 and the regulations thereunder.

(2) *Amounts received or accrued as reimbursement or payment.* For purposes of this section, amounts are considered as

being received or accrued by an individual as reimbursement or payment whether received in the form of money, property, or services. A cash basis taxpayer will include amounts in gross income under section 82 when they are received or treated as received by him. Thus, for example, if an employer moves an employee's household goods and personal effects from the employee's old residence to his new residence using the employer's facilities, the employee is considered as having received a payment in the amount of the fair market value of the services furnished at the time the services are furnished by the employer. If the employer pays a mover for moving the employee's household goods and personal effects, the employee is considered as having received the payment at the time the employer pays the mover, rather than at the time the mover moves the employee's household goods and personal effects. Where an employee receives a loan or advance from an employer to enable him to pay his moving expenses, the employee will not be deemed to have received a reimbursement of moving expenses until such time as he accounts to his employer if he is not required to repay such loan or advance and if he makes such accounting within a reasonable time. Such loan or advance will be deemed to be a reimbursement of moving expenses at the time of such accounting to the extent used by the employee for such moving expenses.

(3) *Direct or indirect payments or reimbursements.* For purposes of this section amounts are considered as being received or accrued whether received directly (paid or provided to an individual by an employer, a client, a customer, or similar person) or indirectly (paid to a third party on behalf of an individual by an employer, a client, a customer, or similar person). Thus, if an employer pays a mover for the expenses of moving an employee's household goods and personal effects from one residence to another residence, the employee has indirectly received a payment which is includible in his gross income under section 82.

(4) *Expenses of moving from one residence to another residence.* An expense of moving from one residence to an-

other residence is any expenditure, cost, loss, or similar item paid or incurred in connection with a move from one residence to another residence. Moving expenses include (but are not limited to) any expenditure, cost, loss, or similar item directly or indirectly resulting from the acquisition, sale, or exchange of property, the transportation of goods or property, or travel (by the taxpayer or any other person) in connection with a change in residence. Such expenses include items described in section 217(b) (relating to the definition of moving expenses), irrespective of the dollar limitations contained in section 217(b)(3) and the conditions contained in section 217(c), as well as items not described in section 217 (b), such as a loss sustained on the sale or exchange of personal property, storage charges, taxes, or expenses of refitting rugs or draperies.

(5) *Attributable to employment or self-employment.* Any amount received or accrued from an employer, a client, a customer, or similar person in connection with the performance of services for such employer, client, customer, or similar person, is attributable to employment or self-employment. Thus, for example, if an employer reimburses an employee for a loss incurred on the sale of the employee's house, reimbursement is attributable to the performance of services if made because of the employer-employee relationship. Similarly, if an employer in order to prevent an employee's sustaining a loss on a sale of a house acquires the property from the employee at a price in excess of fair market value, the employee is considered to have received a payment attributable to employment to the extent that such payment exceeds the fair market value of the property.

(b) *Effective date*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, paragraph (a) of this section is applicable only to amounts received or accrued in taxable years beginning after December 31, 1969.

(2) *Election with respect to payments or reimbursements for expenses paid or incurred before January 1, 1971.* Paragraph (a) of this section does not apply with

respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by an employee at a new principal place of work where such employee had been notified by his employer on or before December 19, 1969, of such move and the employee makes an election under paragraph (h) of § 1.217-2.

[T.D. 7195, 37 FR 13533, July 11, 1972, as amended by T.D. 7578, 43 FR 59355, Dec. 20, 1978]

§ 1.83-1 Property transferred in connection with the performance of services.

(a) *Inclusion in gross income*—(1) *General rule.* Section 83 provides rules for the taxation of property transferred to an employee or independent contractor (or beneficiary thereof) in connection with the performance of services by such employee or independent contractor. In general, such property is not taxable under section 83(a) until it has been transferred (as defined in § 1.83-3(a)) to such person and become substantially vested (as defined in § 1.83-3(b)) in such person. In that case, the excess of—

(i) The fair market value of such property (determined without regard to any lapse restriction, as defined in § 1.83-3(i)) at the time that the property becomes substantially vested, over

(ii) The amount (if any) paid for such property,

shall be included as compensation in the gross income of such employee or independent contractor for the taxable year in which the property becomes substantially vested. Until such property becomes substantially vested, the transferor shall be regarded as the owner of such property, and any income from such property received by the employee or independent contractor (or beneficiary thereof) or the right to the use of such property by the employee or independent contractor constitutes additional compensation and shall be included in the gross income of such employee or independent contractor for the taxable year in which such income is received or such use is made available. This paragraph applies to a transfer of property in connection with the performance of serv-

ices even though the transferor is not the person for whom such services are performed.

(2) *Life insurance.* The cost of life insurance protection under a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection is taxable generally under section 61 and the regulations thereunder during the period such contract remains substantially nonvested (as defined in § 1.83-3(b)). For the taxation of life insurance protection under a split-dollar life insurance arrangement (as defined in § 1.61-22(b)(1) or (2)), see § 1.61-22.

(3) *Cross references.* For rules concerning the treatment of employers and other transferors of property in connection with the performance of services, see section 83(h) and § 1.83-6. For rules concerning the taxation of beneficiaries of an employees' trust that is not exempt under section 501(a), see section 402(b) and the regulations thereunder.

(b) *Subsequent sale, forfeiture, or other disposition of nonvested property.* (1) If substantially nonvested property (that has been transferred in connection with the performance of services) is subsequently sold or otherwise disposed of to a third party in an arm's length transaction while still substantially nonvested, the person who performed such services shall realize compensation in an amount equal to the excess of—

(i) The amount realized on such sale or other disposition, over

(ii) The amount (if any) paid for such property.

Such amount of compensation is includible in his gross income in accordance with his method of accounting. Two preceding sentences also apply when the person disposing of the property has received it in a non-arm's length transaction described in paragraph (c) of this section. In addition, section 83(a) and paragraph (a) of this section shall thereafter cease to apply with respect to such property.

(2) If substantially nonvested property that has been transferred in connection with the performance of services to the person performing such